* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 12th March 2026***
Judgment pronounced on: 29th May 2026

\+ **RFA 1022/2019 with CM APPL. 51637/2019**

LAXMI KUMAR KAPUR (DECEASED)
THR LRS .....Appellant

Through: Mr. Siddharth Dutta & Mr. Pratyush Singh, Advocates.

versus

RAVI KAPUR & ANR .....Respondents

Through: Mr. Naresh Thanai, Advocate for R-1.
Mr. Sanjeet Malik, Advocate for R-2. (*through VC*).

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present appeal under Section 96 of the Code of Civil Procedure, 1908 (hereinafter 'CPC') has been preferred by the appellants, *i.e.* legal representatives of original plaintiff, seeking the setting aside of the judgment and decree dated 30th August 2019 (hereinafter 'impugned judgment'), passed by the ADJ-02, Rohini Courts, Delhi in CS No. 78742/2016 titled "***Laxmi Kumar Kapur* v. *Ravi Kapur & Anr.***"

2. By way of the impugned judgment, the suit filed by the plaintiff for partition, possession, declaration and mesne profits has been dismissed.

3. Brief facts necessary for deciding the present appeal are as follows:

3.1. The original plaintiff and the defendants were siblings, being children of late Shri Jagdish Chandra Kapur (father) and Smt. Jaiwanti Kapur (mother).

3.2. The parents of the parties herein jointly owned property bearing no.*C-2/114, West Enclave, Pitampura, Delhi* (hereinafter 'suit property') by virtue of a Conveyance Deed dated 21st November 1993.

3.3. Both parents executed Wills dated 20th April 2006 on identical terms, whereby each testator bequeathed his/her undivided share in the suit property in favour of the surviving spouse and thereafter provided for devolution of the property amongst the legal heirs in specified proportions.

3.4. The mother of the parties, Smt. Jaiwanti Kapur expired on 8th April 2007.

3.5. Thereafter, the father executed a Gift Deed dated 8th April 2009, transferring the first and second floors of the suit property to the respondent no.1, followed by another Gift Deed dated 15th July 2010, transferring the ground floor to the respondent no.1.

3.6. Subsequently, the father also executed a Will dated 6th August 2010, providing monetary bequests to the deceased plaintiff and the respondent no.2.

3.7. The father of the parties expired on 28th February 2013.

4. The original plaintiff (since deceased) filed a suit bearing CS(OS) No.1428/2013 before this Court seeking relief of partition, declaration and mesne profits on the ground that the gift deeds and the subsequent Will were executed in complete derogation of the mutual Wills dated 20th April 2006 and are liable to be declared null and void, against the defendants.

Subsequently, the said suit was transferred to the District Court on 15th February 2016.

5. An application, being I.A.9234/2014, was filed on behalf of the plaintiff under Order VI Rule 17 of CPC seeking amendment of the plaint to claim the relief of possession of the second floor of the suit property, which the original plaintiff claims was bequeathed to him in terms of his mother's Will dated 20th April 2006. The said application was allowed *vide* order dated 15th May 2014.

6. An application under Order XV Rule 3 of the CPC was filed on behalf of the defendant no.1 seeking disposal of the suit on the basis of pleadings and material/documents on record. The said application was disposed of *vide* order dated 7th March 2018, wherein the Trial Court recorded that since the controversy related to the interpretation of the Wills of the parents of the parties herein, the matter can be decided without asking the parties to lead evidence.

7. During the pendency of the proceedings before the Trial Court, the original plaintiff expired on 7th December 2018 and therefore an application under Order 22 Rule 3 of CPC was filed on behalf of the plaintiff seeking impleadment of the legal representatives of the plaintiff. The said application was allowed *vide* order dated 15th April 2019.

8. The impugned judgment was passed by the Trial Court on 30th August 2019. By way of the impugned judgment, the Trial Court dismissed the suit. The impugned judgment held that the two Wills dated 20th April 2006 executed by the mother and the father of the parties respectively are identical, but they did not constitute mutual Wills, as no agreement restricting the rights of the surviving spouse was discernible therefrom.

There was no element of mutuality or agreement between the parties with respect to the appropriation of the suit property in any manner. The Trial Court observed that the language of the Wills conferred exclusive ownership and complete rights of disposition upon the surviving spouse and did not create a mere life interest. Accordingly, it was held that late Shri Jagdish Chandra Kapur (father of the parties) became the absolute owner of the property after the demise of his wife and was competent to execute the subsequent gift deeds and Will.

9. Aggrieved by the aforesaid, the present appeal has been filed.

PROCEEDINGS BEFORE THIS COURT

10. Notice in the present appeal was issued *vide* order dated 2nd December 2019.

11. The matter was referred for mediation on 18th April 2022. However, as per the mediation report dated 14th September 2022, the parties could not arrive at a settlement.

12. The appeal was admitted *vide* order dated 10th July 2023.

13. The matter was heard on 10th February 2026 and 12th March 2026, on which date the judgment was reserved.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

14. The two Wills dated 20th April 2006 are mutual wills, creating binding and irrevocable obligations. Reliance is placed on ***Navneet Lal* v. *Gokul and Ors.***[1] to contend that an agreement between parties executing mutual Wills may be inferred from the testamentary language or proved through surrounding circumstances.

[1] MANU/SC/0328/1975

15. The surviving father acquired only a limited life interest and not absolute ownership. There was no necessity justifying the alienation of the suit property. Therefore, the gift deeds executed by the father are void, being contrary to the mutual wills.

16. The identical language used in both the Wills, stating that property may only be disposed of for necessity, establishes that these were mutual wills creating a life interest rather than an unequivocal transfer. Reliance is placed on the judgment in ***Vickram Bahl* v. *Siddhartha Bahl***[2].

17. If the survivor accepts benefits under the Will after the death of the testator, the survivor cannot act contrary to the arrangement. Reliance is placed on ***Dilharshankar C. Bhacheh* v. *Controller of Estate Duty***[3], ***Arunkumar and Ors.* v. *Shriniwas and Ors.***[4], ***Kuppuswamy Raja* v. *Perumal Raja***[5], and ***Vikram Bahl*** (supra).

18. The respondent no.1, by taking advantage of the old age and dependence of late Shri Jagdish Chandra Kapur, procured execution of the gift deeds and subsequent Will through undue influence and fraud.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.1

19. The two Wills dated 20th April 2006 are not mutual wills but merely identical wills. Upon the demise of the mother, the father became the absolute owner of the property. The Wills permitted the surviving spouse to dispose of the property if required. Therefore, the gift deeds are validly executed and duly registered. The use of identical terms in the Wills does not imply an agreement. Reliance in this regard is placed upon ***Helen Ann***

[2] 2020 SCC OnLine Del 570
[3] (1986) 1 SCC 701
[4] MANU/SC/0317/2003
[5] MANU/TN/0233/1963

***Gray* v. *Perpetual Trustee Co., Ltd.*[6]**

20. It must be established from the tenor of the will that a clear agreement existed between the parties not to revoke the Will after the demise of one party. In this regard, reliance is placed on ***K.S. Palanisami* v. *Hindu Community in General & Citizens of Gobichettipalayambi***[7].

21. The use of the term "necessity if any" in the recitals of the Wills executed by the parents does not render the said Wills contingent and therefore the bequest in favour of the husband was absolute.

22. An Appellate Court should not interfere where the Trial Court has taken a plausible view. The dispute is purely one of interpretation of wills, and the Trial Court has rightly decided the same. Reliance is placed on judgment in ***V. Prabhakara* v. *Basavaraj K***[8].

23. The respondent no.1 is willing to honour the bequest made in the subsequent Will of the father of the parties, dated 6th August 2010.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.2

24. The two Wills dated 20th April 2006 were binding on the parties and their legal heirs. The Trial Court altered the nature of the pleadings and went beyond the suit, which is impermissible in law. Counsel for the respondent no.2 draws attention to the conduct of the respondent no.1, insofar as the Will of the father dated 6th August 2010 required Rs. 25 lakhs to be paid to the appellant and Rs. 15 lakhs to the respondent no.2, which sums have never been paid by the respondent no.1.

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[6] 1928 SCC OnLine PC 52
[7] (2017) 13 SCC 15
[8] (2022) 1 SCC 115

ANALYSIS AND FINDINGS

25. I have heard the counsel for the parties and examined the record of the case.

26. In the present case, the mother and the father of the original plaintiff, as well as the defendants, executed two separate Wills, couched in identical language, on the same date, *i.e.* 20th April, 2006. To begin with, it may be relevant to refer to the relevant extracts from both the Wills.

27. The relevant extracts from the Will dated 20th April 2006, executed by Sh. Jagdish Chandra Kapur, are reproduced below:

> *"And, whereas, the Testator is hereby bequeathing his title, right, interest and share etc. in the above mentioned property unto his wife on the premise that if the Testator precedes his wife Smt. Jaiwanti Kapur, my share in the above mentioned property shall devolve upon her and she shall enjoy the same in her own exclusive rights, interest and control and shall be able to dispose off the same to meet her necessities, if any.*
>
> *Save and except the above, if the above property subsists even after the demise of the wife of the Testator, the same shall devolve upon his other above mentioned legal heirs in the following manners:-*
>
> *a) The Ground Floor of the above property shall devolve upon my daughter Smt. Achla Malhotra and by virtue of this Will, thereby holding her as the owner of the same,*
> *b) The First Floor of the above property shall devolve upon my elder son Mr. Ravi Kapur and by virtue of this Will thereby holding him as the owner of the same,*
> *c) The Second Floor of the above property shall devolve upon my younger son Mr. Laxmi Kapur and by virtue of this Will thereby holding him as the owner of the same, &;*
> *d) The Terrace of the Second Floor and above of the said property shall devolve upon my elder son Mr. Ravi Kapur and younger son Mr. Laxmi Kapur, in equal share."*

28. The relevant extracts from the Will dated 20th April 2006, executed by

Smt. Jaiwanti Kapur, are reproduced below:

> *"And, whereas, the Testator is hereby bequeathing her title, right, interest and share etc. in the above mentioned property unto her husband on the premise that if the Testator precedes her husband Shri Jagdish Chandra Kapur**, my share in the above mentioned property shall devolve upon him and he shall enjoy the same in his own exclusive rights, interest and control and shall be able to dispose off the same to meet his necessities, if any.***
>
> *Save and except the above, if the above property subsists even after the demise of the husband of the Testator, the same shall devolve upon her other above mentioned legal heirs in the following manners:-*
>
> *a) The Ground Floor of the above property shall devolve upon my daughter Smt. Achla Malhotra and by virtue of this Will, thereby holding her as the owner of the same,*
> *b) The First Floor of the above property shall devolve upon my elder son Mr. Ravi Kapur and by virtue of this Will thereby holding him as the owner of the same,*
> *c) The Second Floor of the above property shall devolve upon my younger son Mr. Laxmi Kapur and by virtue of this Will thereby holding him as the owner of the same, &;*
> *d) The Terrace of the Second Floor and above of the said property shall devolve upon my elder son Mr. Ravi Kapur and younger son Mr. Laxmi Kapur, in equal share."*
>
> [Emphasis supplied]

29. On behalf of the appellants, it is contended that both the Wills were mutual wills and hence, the surviving spouse did not have the authority to transfer the suit property except in case of necessity. *Per Contra*, it is the case of the respondents that the wills were merely identically termed wills and did not restrict the surviving spouse from transferring the subject property.

30. Therefore, the issue to be considered by this Court was whether the two Wills are mutual wills or they are simply identical wills. Consequently,

whether there was only a life estate in favour of the father of the parties or the father was free to deal with the suit property.

31. Counsel for the parties have cited various judicial authorities in support of their submissions. Therefore, it is deemed appropriate to refer to some of the authorities cited on behalf of the counsel.

32. In ***Dilharshankar*** (supra), the Supreme Court held that in order for a will to be a mutual will, there must be a definite agreement between the executants that the will would not be revoked or that no disposition contrary thereto would be made after the death of one of the executants. The said judgment was followed by the Supreme Court in ***K.S. Palanisami*** (supra), wherein the Court has delved into the question as to what amounts to a joint and a mutual will. In paragraph 30 of the said judgment, the Supreme Court quoted extracts from *Theobald on Wills, 19th Edn. (Sweet & Maxwell),* defining the joint and mutual will, the relevant extracts of which are set out below:

> *"30. …*
> *"1-011. Persons may make joint wills which are revocable at any time by either of them or by the survivor. A joint will is looked upon as the will of each testator, and may be proved on the death of one.* ***But the survivor will be treated in equity as a trustee of the joint property if the equitable doctrine of mutual wills applies. Under this doctrine there must be an agreement for the survivor to be bound by the arrangement between them; but the mere fact of the execution of a joint will is not sufficient to establish such an agreement for the survivor to be bound.*** *If this doctrine applies, a legacy to a legatee who survived the first testator, but predeceased the second, does not lapse. Where a joint will is followed by a separate will which is conditional on a condition that fails, the joint will is not revoked even though the subsequent separate will contains a revocation clause.*
> *1-012.* ***The term "mutual wills" is used to describe joint or separate wills made as the result of an agreement between the parties to create***

> ***irrevocable interests in favour of ascertainable beneficiaries. The agreement is enforced after the death of the first to die by means of a constructive trust.*** *There are often difficulties as to proving the agreement, and as to the nature, scope, and effect of the trust imposed on the estate of the second to die. The revocable nature of the wills under which the interests are created is fully recognised by a probate court; but in certain circumstances equity protects and enforces the interests created by the agreement despite the revocation of his will by one party after the death of the other without having revoked his will i.e. the survivor's property will be affected by the trust imposed so as to give effect to the agreement."*
>
> [Emphasis supplied]

33. Similarly, in paragraph 31 of ***K.S. Palanisami*** (supra), the Supreme Court quoted extracts from *Halsbury's Laws of England, 5th Edn., Vol. 102*. The relevant extracts are set out below:

> *31. Halsbury's Laws of England, 5th Edn., Vol. 102 under the heading "Testamentary Disposition", in Paras 9 and 10 defines "joint wills" and "mutual wills" in the following manner:*
> *"9. …*
> *10. Mutual wills.-Wills are mutual when the testators confer on each other reciprocal benefits, which may he absolute benefits in each other's property, or life interests with the same ultimate disposition of each estate on the death of the survivor.* ***Apparently, a mutual will in the strict sense of the term is a joint will, but, where by agreement or arrangement similar provisions are made by separate wills, these are also conveniently known as mutual wills. Wills which by agreement confer benefit on persons other than the testators, without the testators conferring benefits on each other, can also be mutual wills. Where there is an agreement not to revoke mutual wills and one party dies having stood by the agreement, a survivor is bound by it.****"*
> *…*
>
> [Emphasis Supplied]

34. In ***Helene Ann Gray*** (supra), it was held that merely because two wills have been executed on the same day and they are couched in similar language, it would not mean that there was an agreement between the executants not to revoke the Will.

35. In ***Krishna Kumar Birla*** **v.** ***Rajendra Singh Lodha***[9], the Supreme Court has emphasised that similarity of the terms of purported mutual wills would not be enough to establish an agreement.

36. What flows from a reading of the aforesaid judicial precedents is that for a will to qualify as a mutual will, there must exist a clear and definite agreement between the executants that the arrangement would remain irrevocable after the death of one of them and that the surviving testator would not deal with the property contrary thereto. The mere execution of two wills on the same day that are couched in identical language would not by itself establish the existence of a mutual will or a binding agreement restricting revocation or alienation. The agreement between the testators could be discerned from the tenor of the will. Even though the said agreement may not be in expressed terms, it should follow by necessary implication.

37. At this stage, it may be relevant to refer to the observations made by the Trial Court in the impugned judgment. The relevant observations/findings in paragraphs 23 and 24 are set out below:

> *"23. Coming back to the Wills of this Case, the two Wills left by the parents of the parties though are identical, bequeathing share of one in favour of another, but there is no element of mutuality or any agreement between the parents to appropriate the property in any particular, manner or for particular purpose. The words "shall enjoy the same In his/her own exclusive rights, interest and control" and the words "and shall be able to dispose off the same to meet his/her necessities, if any", the words "save and accept the above, if the above property subsists even after the demise of the husband/wife of the testator, the same shall devolve upon his/her other heirs", makes abundantly clear that what was intended by the testator and testatrix was that his/her share shall be exclusively owned by the surviving*

[9] (2008) 4 SCC 300

spouse. Not only exclusive rights were conferred, exclusive interest, exclusive control and exclusive right to dispose off the property was conferred. The words to meet his/her necessities does not go to the extent of creating life interest. The intention of the testatrix was clear that even if the property survives and remains after the death of her husband, only in that eventuality her property would go to the heirs in the manner specified.

24. Thus, there was no agreement between the spouses that the surviving spouse shall acquire life interest only and the intention of the parents were to give exclusive ownership to the surviving spouse. The father, upon death of mother of parties, thus became exclusive owner of the property and was fully competent to dispose off the property without there being any rider and thus the subsequent gift deeds/Will cannot be questioned by the plaintiff."

38. From a reading of the two Wills in the present case, the position which emerges is that both the mother and the father of the parties made identical wills on the same date in terms of which their respective share in the suit property were to devolve upon the surviving spouse. The Wills executed by the parents of the parties provide that the surviving spouse shall enjoy the property in his/her ***"exclusive rights, interest and control"*** and ***"shall be able to dispose of the same"***. There is no covenant or binding agreement restricting the power of alienation of the surviving spouse. The stipulation that the property would devolve upon the heirs only if the property subsists after the demise of the surviving spouse further reinforces the intention to confer complete ownership and dominion upon the survivor. The language used in the two Wills does not suggest that there was a condition restricting the right of the father to dispose of the subject property. If it was the intention of the executants to impose restrictions on the surviving spouse to dispose of the suit property, they could have used the words "*life estate*" or specifically put in proper language, restricting the

right of the surviving executant to dispose of the subject property.

39. The Trial Court has correctly held that merely on account of use of the words ***"shall be able to dispose of the same to meet his/her necessities, if any"***, it cannot be stated that a life interest was created through the said two Wills. The words "necessities, if any" cannot be read in a manner that a restriction or a contingency has been imposed on the surviving spouse with regard to the alienation the property.

40. The appellant has relied upon the judgments in ***Navneet Lal*** (supra) and ***Arunkumar*** (supra), which lay down the principles to be applied by Courts in the interpretation of the wills. In ***Navneet Lal*** (supra), it was held that the intention of the testator is to be acquired from the words used in the will and the circumstances surrounding the execution of the will. In ***Arunkumar*** (supra), the Supreme Court, on the basis of the language used in the will, came to the conclusion that only a life estate had been created in the subject property in favour of the spouse. The language used in the will in said judgment was quite different from the language used in the two Wills in the present case and the Trial Court has correctly distinguished the said judgment in paragraph 14 of the impugned judgment.

41. The appellant has placed strong reliance on the judgment of the Single Bench of this Court in ***Vickram Bahl*** (supra). In the said case, the dispute between family members arose out of a will jointly executed by a husband and wife. Under the said will, the husband and wife, who were joint owners of the property, provided that upon the demise of one spouse, the rights and interest of the deceased spouse would "rest with the survivor" and after the demise of both spouses, different portions of the property would devolve upon their sons and granddaughters. After the death of the husband, disputes

arose when the surviving spouse claimed absolute ownership over the property and sought to deal with the same contrary to the arrangement contained in the will. The Court held that the document in question constituted a mutual will since the agreement between the spouses regarding devolution of the jointly owned property was evident from the language of the document itself.

42. Clearly, the aforesaid judgment is distinguishable from the facts of the present case. In ***Vickram Bahl*** (supra), the will did not confer unrestricted ownership and powers of disposition upon the surviving spouse. The language employed in the subject Wills in the present case unequivocally confers complete dominion and ownership upon the surviving spouse and is materially different from the language interpreted in the aforesaid judgment. In the present case, no such restrictive covenant or prohibition against alienation is discernible from the Wills. Rather, the stipulation that the property would devolve upon the heirs only if the property subsists after the demise of the surviving spouse clearly indicates that alienation by the surviving spouse was contemplated and permitted.

43. The appellant has also relied upon the judgment of the High Court of Madras in ***Kuppuswami*** (supra), wherein it was held that the joint will would become irrevocable on the death of one of the testators, if the survivor received benefits under the will. However, in the present case, there is nothing to show that the father of the party received any benefit. The Trial Court has rightly distinguished the aforesaid judgment.

44. In view of the discussion above, this Court is of the view that the Trial Court has correctly come to the conclusion that the suit property devolved upon the father of the parties in an absolute manner and the father was

competent to deal with the said property in any manner he desired. Hence, the father was fully competent to execute the gift deeds in respect of the said property.

45. Insofar as the challenge raised by the appellants with regard to the validity of the gift deeds and the subsequent Will executed by the father of the parties is concerned, no averments/pleadings have been made by the plaintiff in this regard in the plaint. The Trial Court has clearly noted in paragraph 8 of the impugned judgment that the only challenge of the appellants disputing the said documents is with regard to the competency of the father to execute these documents. Paragraph 8 of the impugned order is set out below:

> *"8. It may be reiterated here that the fact of execution of the two gift deeds and the subsequent Will dated 06.08.2010 is not disputed by the plaintiff, but what is disputed is competence of the father to execute these / documents."*

46. In view of the discussion above, I do not find any infirmity in the impugned judgment of the Trial Court so as to require the interference of this Court.

47. Consequently, the appeal is dismissed.

48. The respondent no.1 shall be bound by its statement to honour the terms of the subsequent Will dated 6th August 2010.

AMIT BANSAL
(JUDGE)

MAY 29, 2026
Vivek/-